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83-1280

No.

In the
Supreme Court of the United States
OCTOBER TERM, 1983

JEANNE AIMONE,

Appellant,

v.

MORGAN M. FINLEY,

Appellee.

Appeal from the Supreme
Court of Illinois

JURISDICTIONAL STATEMENT

BARRY K. WITLIN**
TERRY SULLIVAN
60 Gould Center, East Tower,
Suite 519
Rolling Meadows, Illinois 60008
(312) 228-1100

BARRY K. WITLIN
180 North La Salle, Suite 1425
Chicago, IL 60601
(312) 332-5315
Counsel for Appellant
** Counsel of Record

The Scheffer Press, Inc.—(312) 263-6850

QUESTION PRESENTED

Whether the Appellate Court erroneously found that the adoption statute did not deprive Appellant of property (a right to inherit) without due process of law.

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Appellee.

Appeal from the Supreme
Court of Illinois

JURISDICTIONAL STATEMENT

Pursuant to Rules 13(2) and 15 of the Rules of the Supreme Court of the United States, Appellant, JEANNE AIMONE, files this statement on the basis upon which it is contended that the Supreme Court of the United States has jurisdiction to review the order entered by the Supreme Court of Illinois in this case and should exercise such jurisdiction herein.

OPINION BELOW

The opinion of the Illinois Appellate Court appears in 113 Ill.App. 3d 507, 447 N.E. 2d 868 and is included herein as Appendix A (pp. 1a-4a).

JURISDICTION

This appeal arises from a mandamus action requesting the inspection of adoption records. The judgment of the Appellate Court of Illinois affirming the trial court's granting of a motion to dismiss was rendered on March 21, 1983. A petition for leave to appeal was denied by the Illinois Supreme Court on October 4, 1983. A timely motion to appeal was filed on December 29, 1983.

This Court's jurisdiction is invoked pursuant to 28 U.S.C. §1257(2).

STATUTES INVOLVED

ILL.REV.STAT. (1981), ch. 40, par. 1522

> ". . . Upon motion of any party to an adoption proceeding the court shall, or upon the court's own motion the court may, order that the file relating to such proceedings shall be impounded by the clerk of the court and shall be opened for examination only upon specific order of the court, which order shall name the person or persons who are to be permitted to examine such file. Certified copies of all papers and documents contained in any file so impounded shall be made only on like order."

ILL.REV.STAT (1981), ch. 110½, par. 2-1

> "The intestate real and personal estate of a resident decedent and the intestate real estate in this State of a nonresident decedent, after all just claims

against his estate are fully paid, descends and shall be distributed as follows:

(a) If there is a surviving spouse and also a descendant of the decedent: ½ of the entire estate to the surviving spouse and ½ to the decedent's descendants per stirpes.

(b) If there is no surviving spouse but a descendant of the decedent: the entire estate to the decedent's descendants per stirpes. . . ."

STATEMENT OF THE CASE

On July 2, 1981, the Appellant filed a petition for mandamus to compel Morgan Finley, Clerk of the Circuit Court of Cook County, Illinois to allow her to examine the sealed court records relating to her adoption. The Appellant wished to make a claim against the estate of her natural parents and/or other genetic relatives as allowed by Illinois statutes and case law. However, this right to inherit was frustrated by a provision of the adoption statute which sealed her birth records, thus depriving her of property without due process of law.

The appellee filed a motion to dismiss which was granted by the trial court. The trial court held that because petitioner did not know whether her natural parents were dead, she did not have a vested right to inherit. The Appellate Court affirmed finding, "An expectation of inheritance does not constitute a vested right. (citations) Therefore, petitioner has failed to establish a violation of due process." (slip opinion at 3).

SUBSTANTIALITY OF FEDERAL QUESTIONS

This appeal presents the substantial and important federal question of whether the Adoption Statute which seals the Appellant's birth records deprives her of property without due process of law.

It is undisputed that pursuant to Illinois law, the Appellant has a statutory right to inherit from her natural parents and other genetic relatives. As the Illinois Supreme Court stated in *In Estate of Tilliski* (1945), 390 Ill. 273, 61 N.E.2d 24:

> "A child does not lose its right of inheritance from its natural parent by becoming the adopted child of another, unless such right is expressly taken away by statute. . . . In a matter of such general importance the legislature would have made express provision if it had intended a child should lose its birthright upon becoming adopted by another." 390 Ill. at 283.

It is also undisputed that the Illinois legislature has never terminated an adopted person's right to inherit nor limited said right to individuals who know the identity of their ancestors. In refusing the Appellant access to her birth records, the State frustrates this statutory right to inherit. As was noted in the dissent in *In Re Roger B.* (1980), 85 Ill.App.3d 1064, affirmed (1981), 84 Ill.2d 323:

> "How can adopted adults inherit from their genetic parents or genetic relatives if the law prohibits them from finding out their identity? The circumstances become virtually absurd when one considers 30, 40 and 50 year old adopted adults being denied their

> rightful inheritances because the law prevents them from knowing the persons from whom they are legally entitled to inherit." 85 Ill.App.3d at 1074.

Thus, the statute which places the petitioner's adoption records and her original birth certificate under seal conflicts with the statute which gives her a right to inherit and deprives her of property without due process of law.

The issue of an adoptee's right to inherit has rarely been considered by courts of Illinois or any other jurisdiction. However, the Supreme Court of Louisiana has recognized the problem which results when one statute grants an adopted person the right to inherit and another statute denied that person access to her birth records in order to act on that right. In *Massey* v. *Parker* (1979), 369 So.2d 1310, the court noted that:

> "Under the law of Louisiana it is clear that a person who is adopted retains the right of inheritance from blood parents and other blood relatives. (Citation) This right which the law gives an adopted person may constitute a compelling reason for the opening of the sealed records."

Although the appellate court in its opinion recognized the appellant's statutory right to inherit, the court did not address the fact that the sealing of her records prohibits her from exercising this right. It is appellant's argument that it is up to the legislature to terminate her right to inherit, if it so desires, by a specific enactment. (See, e.g., S.C. Code, sec. 20-7-1770(a).) The appellate court simply ignored this argument.

If any of Appellant's genetic relatives have recently died, she would have a right of inheritance beyond the

power of the Illinois legislature to change. At the moment of a person's death, the rights of his heirs to succeed to his estate if intestate are fixed and vested in Illinois. (*Havill* v. *Havill* (1928), 332 Ill. 11, 163 N.E. 428). Thus by denying her access to her records to ascertain her right to inherit, the state deprives her of property without due process of law.

In its opinion the appellate court found no violation of due process because it characterized petitioner's right to inherit as a mere expectancy. Such an assertion is ironic and indefensible since it is the activity of the State which prevents the petitioner from determining whether her parents have in fact died intestate.

CONCLUSION

For the reasons stated above, Appellant submits that this appeal brings before the court a substantial and important federal question which requires plenary consideration. The court should take jurisdiction of this appeal.

Respectfully submitted,

TERRY SULLIVAN
LAW OFFICES OF
TERRY SULLIVAN, LTD.
60 Gould Center, East Tower,
Suite 519
Rolling Meadows, Illinois 60008
(312) 228-1100
Attorney for the Appellant

APPENDIX

FIRST DIVISION

Filed March 21, 1983

82-1154

IN RE: JEANNE AIMONE,

JEANNE AIMONE,

Petitioner-Appellant,

vs.

MORGAN M. FINLEY, Clerk of the Circuit Court of Cook County,

Respondent-Appellee.

Appeal from the Circuit Court of Cook County
The Hon. JAMES C. MURRAY, *Judge Presiding.*

JUSTICE GOLDBERG delivered the opinion of the court:

Jeanne Aimone (petitioner) filed a petition for mandamus to compel Morgan Finley, clerk of the circuit court of Cook County (respondent), to allow petitioner to examine the sealed court records relating to petitioner's adoption. Respondent's motion to dismiss the action was granted by the trial court. Petitioner appeals.

Petitioner was born on August 5, 1947. On or about September 10, 1947, she was adopted by Gerald and Virginia Aimone. Petitioner seeks access to the sealed file relating to her adoption on the theory that she has legal right to inherit from the estates of her natural parents.

The Illinois Adoption Act provides (Ill. Rev. Stat. 1981, ch. 40, par. 1522):

> "Upon motion of any party to an adoption proceeding the court shall, or upon the court's own motion the court may, order that the file relating to such proceeding shall be impounded by the clerk of the court and shall be opened for examination only upon specific order of the court, which order shall name the person or persons who are to be permitted to examine such file. Certified copies of all papers and documents contained in any file so impounded shall be made only on like order."

In *In Re Roger B.* (1981), 84 Ill. 2d 323, 418 N.E.2d 751, *appeal dismissed,* 454 U.S. 806, the Illinois Supreme Court upheld the constitutionality of the above quoted provision. In addition, the court held an adoptee must show "good cause" for the inspection of sealed adoption records. (84 Ill. 2d 323, 326.) The supreme court also characterized plaintiff's wish to examine the adoption records as arising from "plaintiff's desire to discover his natural identity" which did not qualify as good cause. 84 Ill. 2d 323, 336.

Nevertheless, petitioner contends in this court that her interest in the possible inheritance from her natural parents outweighs the policy considerations for keeping adoption files under seal and the legal bar to her inspection of the files deprives her of property without due process of law. We disagree.

Petitioner has a statutory right to inherit from her natural parents. (See Ill. Rev. Stat. 1981, ch. 110½, pars. 2-1, 2-4; *In Re Estate of Tilliski* (1945), 390 Ill. 273, 283, 61 N.E.2d 24.) However, the constitutional prohibition against deprivation of property can only attach when the right is vested which is "something more than a mere expectation • • •." (*Talandis Construction Corp.* v. *Illinois Building Authority* (1978), 60 Ill. App. 3d 715, 720, 377 N.E.2d 237, *leave to appeal denied,* 71 Ill. 2d 615.) An expectation of inheritance does not constitute a vested right. (*Jennings* v. *Capen*

(1926), 321 Ill. 291, 296-97, 151 N.E. 900; see also *In Re Estate of Leichtenberg* (1956), 7 Ill. 2d 545, 551-52, 131 N.E.2d 487.) Therefore, petitioner has failed to establish a violation of due process.

In *In Re Roger B.*, the supreme court explained the potent policy interests which are promoted by the sealing of adoption records. Included in those interests are the facilitation of the adoption process by maintaining anonymity of the natural parents, the right to privacy of the natural parents, and the integrity of the new adoptive family. 84 Ill. 2d 323, 329-33.

We must reject petitioner's argument that there could be no violation of the privacy rights of natural parents because they placed petitioner for adoption before the enactment of the law sealing adoption records. The natural parents in *In Re Roger B.* apparently placed the petitioner there for adoption in 1949, also prior to the enactment of the statute concerning sealing of adoption records. Nevertheless, the court there found the privacy interest of the natural parents was not only a relevant factor but was critical in determining the rights of the parties. See 84 Ill. 2d 323, 329.

We simply do not consider the expectation of a possibility that an adopted person may inherit from her natural parents, is sufficient cause to open sealed adoption files. If such were the case, every adopted person could circumvent the statute by asserting their right to inherit. The statute would become meaningless and the interests sought to be furthered by the legislature would be frustrated.

Petitioner contends the decision in *In Re Roger B.* is not controlling here because it is limited only to the issue of constitutionality of the above quoted portion of the adoption statute. We reject this argument. On the contrary we find the opinion in *In Re Roger B.* actually transcends the issue of constitutionality and considers the broad background of the policy considerations in

protecting the privacy of both the adopting parents and also of the natural parents.

Additionally, as an independent ground for affirmance here, we conclude mandamus is not an appropriate remedy in the instant case. Mandamus is legally proper only where a public official is under a clear obligation to perform a specific duty and "there is a clear right to the requested relief." (*In Re Claudia K.* (1982), 91 Ill. 2d 469, 476, 440 N.E. 2d 78.) Under the statute in question, the records are to remain sealed unless there is a judicial determination that the files should be opened. Therefore, the clerk of the circuit court cannot have a clear legal duty to open the files at the mere request of the petitioner. Furthermore, the standard of showing "good cause" as outlined in *In Re Roger B.* requires a case by case analysis, which implicitly negates the possibility of a clear duty to act resting upon the clerk of the court as respondent here.

Therefore, we conclude the issues raised by petitioner are settled by the supreme court in *In Re Roger B.* The supreme court expressly held "the trial court did not abuse its discretion in concluding that [petitioner's] desire to obtain release of the records should not prevail over the potential infringement of the rights of other parties." 84 Ill. 2d 323, 336-37.

For these reasons the judgment appealed from is affirmed.

Judgment affirmed.

McGLOON and CAMPBELL, *JJ.*, concur.

(Letterhead of)

ILLINOIS SUPREME COURT

JULEANN HORNYAK, CLERK

SUPREME COURT BUILDING
Springfield, Ill. 62706
(217) 782-2035

October 4, 1983

Mr. Terry Sullivan
Attorney at Law
60 Gould Center, S#519
Rolling Meadows, IL 60007

No. 58291 — Jeanne Aimone, petitioner vs. Morgan M. Finley, Clerk of the Circuit Court of Cook County, respondent. Leave to appeal, Appellate Court, First District.

The Supreme Court today *DENIED* the petition for leave to appeal in the above entitled cause.

Very truly yours,

/s/ Juleann Hornyak
Clerk of the Supreme Court

P.S. The Mandate of this Court will issue to the Appellate Court on October 26, 1983.

IN THE

SUPREME COURT OF ILLINOIS

No. 58291

IN RE: JEANNE AIMONE,

Petitioner-Appellant,

vs.

MORGAN M. FINLEY, Clerk of the Circuit Court of Cook County,

Respondent-Appellee.

Petition for Leave to Appeal from the Appellate Court of Illinois, First Judicial District
Appellate Court NO. 82-1154
There heard on appeal from the Circuit Court of Cook County.
Honorable JAMES C. MURRAY, *Presiding*

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Jeanne Aimone, Petitioner-Appellant, hereby appeals to the Supreme Court of the United States from the final order of the Supreme Court of Illinois denying her petition for leave to appeal entered in this action on October 4, 1983.

This appeal is taken pursuant to Title 28, United States Code, Section 1257, subparagraph 2.

JEANNE AIMONE,
Petitioner-Appellant

By: /s/ Terry Sullivan
TERRY SULLIVAN
The Law Offices Of Terry Sullivan, Ltd.
60 Gould Center, East Tower, Suite 519
Rolling Meadows, Illinois 60008
(312) 228-1100

Dated: December 29, 1983

AFFIDAVIT OF SERVICE

STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

I, NANCY J. NICOL, depose and say that I am an attorney in the LAW OFFICES OF TERRY SULLIVAN, LTD., attorney of record for JEANNE AIMONE, the Petitioner-Appellant herein, and that, pursuant to Rule 33, Rules of the Supreme Court, I served a copy of the attached notice of appeal on Richard M. Daley, State's Attorney of Cook County, 500 Richard J. Daley Center, Chicago, IL 60602, by mailing to him a copy in a duly addressed envelope, with postage prepaid, at the foregoing address.

/s/ Nancy J. Nicol
Nancy J. Nicol
Attorney at Law

Subscribed and Sworn to before me
this 27th day of December, 1983.

/s/ Peggy Macies
Notary Public

My commission expires January 12, 1985.

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No. 83-1280

In the
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OCTOBER TERM, 1983

JEANNE AIMONE,

Appellant,

v.

MORGAN M. FINLEY,

Appellee.

On Appeal From The Supreme Court Of Illinois

MOTION TO DISMISS OR AFFIRM

RICHARD M. DALEY
State's Attorney of Cook County
500 Richard J. Daley Center
Chicago, Illinois 60602
(312) 443-5465
Attorney for Appellee.

JANE CLARK CASEY
Deputy State's Attorney
Chief, Civil Actions Bureau

RANDYE A. KOGAN
Assistant State's Attorney
Of Counsel.

The Scheffer Press, Inc.—(312) 263-6850

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

No. 83-1280

JEANNE AIMONE,

Appellant,

v.

MORGAN M. FINLEY,

Appellee.

On Appeal From The Supreme Court Of Illinois

MOTION TO DISMISS OR AFFIRM

The Appellee, Morgan M. Finley, Clerk of the Circuit Court of Cook County, Illinois (hereinafter referred to as "Court Clerk") moves the Court to dismiss the appeal herein, or in the alternative, to affirm the judgment of the Supreme Court of Illinois on the ground that it is manifest that the questions on which the decision of the case rests are so insubstantial as not to need further argument.

FACTS

The facts of this case are adequately discussed in the opinion of the Illinois Appellate Court, First District, 113 Ill. App. 3d 507, 447 N.E.2d 868 (1st Dist. 1983). A brief summarization is made here for the Court's convenience.

Appellant filed a petition for mandamus asking the trial court to order Morgan M. Finley, the Clerk of the Circuit Court of Cook County, Illinois, Appellee, to unseal and allow the appellant to examine her own adoption records. A motion to dismiss was filed by the Court Clerk asserting that mandamus was an inappropriate remedy in this case. The trial court agreed and granted the motion to dismiss. The trial court found that mandamus was not an appropriate remedy because petitioner had failed to demonstrate that she had a clear legal right to the unsealing of her adoption records. As an independent ground for affirmance, the appellate court upheld the trial court's finding that mandamus was not an appropriate remedy in this case. The appellate court also found that an adoptee's interest in the possible inheritance from her natural parents did not outweigh the policy considerations for keeping adoption files under seal and that such bar to her inspection of the files did not deprive her of property without due process of law.

On October 4, 1983, the Illinois Supreme Court denied appellant's petition for leave to appeal. The mandate issued to the Appellate Court on October 26, 1983.

ARGUMENT

I. THE APPEAL SHOULD BE DISMISSED BECAUSE THIS CASE PRESENTS NO SUBSTANTIAL QUESTION.

A. The Judgment Of The Illinois Appellate Court Rested On Adequate And Independent State Grounds.

This Court has consistently held to the proposition that it will not review judgments of state courts which rest on adequate and independent state grounds. *Hub* v. *Pitcairn,* 324 U.S. 117 (1945); Sup.Ct.R. 16(1)(b). In the instant case, the Illinois Appellate Court specifically set forth that it chose to affirm on an independent ground, *In Re Jeanne Aimone,* 113 Ill. App. 3d 507, 509, 447 N.E.2d 868, 870 (1st Dist. 1983). The Court stated that mandamus was not a proper remedy in that the clerk of the court did not have a clear legal duty to open the adoption files without a court order. The appellate court's decision was based on Illinois' special remedy law and not on federal grounds.

Where the state court rests its decision on both state and federal grounds, either of which would be dispositive, this Court would have no jurisdiction. *Zacchini* v. *Scripps-Howard Broadcasting Co.,* 433 U.S. 562, 568 (1977). In *Hub* v. *Pitcairn,* 324 U.S. 117, 126 (1945), this Court noted that where, as here, the same judgment would be rendered by the state court after review of the federal issues, the review by this Court could amount to nothing more than an advisory opinion. No Constitutional review would render the facts in this case amenable to a mandamus action.

B. The Challenged Statutory Scheme Does Not Concern Any Constitutional Right Of The Appellant.

Appellant tries to bootstrap her alleged right to adoption records on a right to inherit argument. The right to intestate inheritance is conferred by Illinois statute. Ill. Rev. Stat. 1981, ch, 110½, par. 2-1. Nowhere does the statute limit inheritors to natural children. Each heir may be limited by his individual circumstances, and no statutory scheme exists to automatically preclude adoptees from inheriting from either their natural parents or their adoptive parents. Ill. Rev. Stat. 1977, ch. 110½, par. 2-4.

The right to demand that property pass by inheritance or will to heirs or devisees is not an inherent or natural Constitutional right, but is a purely statutory right. Nothing in the Federal Constitution forbids the legislature of a state to limit, condition, or even abolish the power of the testamentary disposition over property within its jurisdiction. *Irving Trust Co.* v. *Day*, 314 U.S. 556, 562 (1942).

Nowhere is it required that a state must make information available, on demand, which may, or may not lead to an inheritance. While appellant may be entitled to inherit from her natural parents if they are deceased and if they have died intestate, she may still be precluded from free access to her adoption records. Due process rights do not operate in vacuums and cannot be applied speculatively or whimsically. *Webb's Fabulous Pharmacies, Inc.* v. *Beckwith*, 449 U.S. 155, 161 (1980).

II. IN THE ALTERNATIVE, THE DECISION OF THE ILLINOIS SUPREME COURT SHOULD BE AFFIRMED.

The unsealing of adoption records in order to ascertain the possible existence of an inheritance would violate a natural parent's Constitutional right to privacy and would frustrate the legitimate interest of the State in keeping those records sealed. Any right to inherit must be balanced against the right to privacy, and the right to privacy is certainly the weightier of the two claims. In the case at bar, the state's protection of the adoption process by control of its judicial records does not rise to the level of an unconstitutional infringement of petitioner's rights.

Although the Constitution does not explicitly mention any right of privacy, the Court has recognized that one aspect of the liberty protected by the Fourteenth Amendment is a right of personal privacy. *Carey* v. *Population Services*, 431 U.S. 678 (1977); *Roe* v. *Wade*, 410 U.S. 113 (1974). The decision of whether or not to bear a child is an example of the kind of concern constitutionally entitled to the right of privacy. *Carey* v. *Population Services, supra*; *Roe* v. *Wade, supra*; *Planned Parenthood of Central Missouri* v. *Danforth*, 428 U.S. 52 (1976). This privacy right extends to an individual's liberty to make choices as they regard contraception and child bearing. *Eisenstadt* v. *Baird*, 405 U.S. 438 (1972). Just as the courts protect the freedom of choice and privacy with respect to childbearing in terms of abortion, they must also protect the freedom of choice and privacy in terms of adoption. In an adoption, the natural parents sever all present and future rights and interests in the child. Ill. Rev. Stat. 1981, ch. 40, sec. 1521. *In Re Cech*,

8 Ill. App. 3d 642, 291 N.E.2d 21 (1st Dist. 1972); *In Re Petition of Jollay,* 22 Ill. App. 3d 151, 319 N.E.2d 287 (3rd Dist. 1974). The natural parents surrender their child for adoption with not merely an expectation of confidentiality, but with an actual statutory promise that their identity as the child's natural parents will be kept sealed. Ill. Rev. Stat. 1981, ch. 40, sec. 1522. "Thus, the natural parent has a right to privacy, a right to be let alone that is not only expressly assured (by statute) but also has been recognized as a vital interest by the United States Supreme Court. *Stanley* v. *Georgia,* 394 U.S. 557 (1969)." *The Alma Society Inc.* v. *Mellon,* 459 F. Supp. 912 (S.D. N.Y. 1978).

When comparing the fundamental right to privacy with a statutory right to inherit, it is obvious that the balance falls directly on the privacy side. "Rights of succession to the property of a deceased, whether by will or by intestacy, are of a statutory creation, and the dead hand rules succession only by sufferance. Nothing in the Federal Constitution forbids the legislature of a state to limit, condition, or even abolish the power of testamentary disposition over property within its jurisdiction." *Irving Trust Co.* v. *Day,* 314 U.S. 556, 562 (1942).

CONCLUSION

For the reasons stated herein, this appeal should be dismissed or the judgment affirmed.

Respectfully submitted,

RICHARD M. DALEY
State's Attorney of Cook County
500 Richard J. Daley Center
Chicago, Illinois 60602
(312) 443-5465
Attorney for Appellee.

JANE CLARK CASEY
Deputy State's Attorney
Chief, Civil Actions Bureau

RANDYE A. KOGAN
Assistant State's Attorney
Of Counsel.